

IC 9-23-3

Chapter 3. Unfair Practices

IC 9-23-3-0.3

"Broker"

Sec. 0.3. As used in this chapter, "broker" means a person who, for a fee, a commission, or other valuable consideration, arranges or offers to arrange a transaction involving the sale, for purposes other than resale, of a new or used motor vehicle and who is not:

- (1) a dealer or an employee of a dealer;
- (2) a distributor or an employee of a distributor; or
- (3) at any point in the transaction, the bona fide owner of the vehicle involved in the transaction.

As added by P.L.268-2003, SEC.28.

IC 9-23-3-0.5

"Uniform time standards manual"

Sec. 0.5. As used in this chapter, "uniform time standards manual", for purposes of section 14(c) of this chapter, means a schedule established by a manufacturer or distributor setting forth the time allowances for the diagnosis and performance of warranty work and service.

As added by P.L.78-2002, SEC.5. Amended by P.L.1-2003, SEC.51.

IC 9-23-3-1

Requiring purchase of equipment, part, or accessory as condition of sale

Sec. 1. It is an unfair practice for a dealer to require a purchaser of a motor vehicle, as a condition of sale and delivery of the motor vehicle, to purchase any equipment, part, or accessory not ordered by the purchaser unless the equipment, part, or accessory is already installed on the motor vehicle when received by or offered for sale by the dealer or is required by law.

As added by P.L.2-1991, SEC.11.

IC 9-23-3-2

Willful failure of dealer to perform vehicle delivery and preparation obligations

Sec. 2. It is an unfair practice for a dealer to willfully fail to perform the obligations placed on the dealer in connection with the delivery and preparation of a new motor vehicle for retail sale as provided in the manufacturer's or distributor's preparation and delivery agreement applicable to the motor vehicle.

As added by P.L.2-1991, SEC.11.

IC 9-23-3-3

Willful failure of dealer to perform warranty obligations

Sec. 3. It is an unfair practice for a dealer to willfully fail to perform the obligations placed on the dealer in connection with the manufacturer's or distributor's warranty agreement applicable to any

motor vehicle sold by that dealer.
As added by P.L.2-1991, SEC.11.

IC 9-23-3-4

Sale of vehicle having trade name or mark for which dealer lacks franchise

Sec. 4. It is an unfair practice for a dealer to sell any new motor vehicle having a trade name, trade or service mark, or related characteristics for which the dealer does not have a franchise in effect at the time of the sale. However, vehicles having more than one (1) or more trade name, service mark, or related characteristic as a result of modification or further manufacture by a manufacturer or converter manufacturer licensed under this article may be sold by a franchisee appointed by that manufacturer or converter manufacturer.
As added by P.L.2-1991, SEC.11.

IC 9-23-3-5

Willful failure of dealer to perform fiduciary duty to collect and remit gross retail tax

Sec. 5. It is an unfair practice for a dealer to willfully fail to perform the fiduciary duty imposed upon the dealer by IC 6-2.5-2-1 with regard to the collection and remittance of the gross retail tax. Willful violation of the fiduciary duty includes written or oral agreements between a dealer and a prospective purchaser that would give the appearance that a bona fide trade-in has taken place, when in fact the purpose of the agreement is to reduce the prospective purchaser's gross retail tax and thereby deprive the state of revenue.
As added by P.L.2-1991, SEC.11.

IC 9-23-3-6

Sale, exchange, or transfer by dealer of rebuilt vehicle without disclosure of rebuilding

Sec. 6. It is an unfair practice for a dealer to sell, exchange, or transfer a rebuilt vehicle without disclosing in writing to the purchaser, customer, or transferee, before consummating the sale, exchange, or transfer, the fact that the vehicle is a rebuilt vehicle if the dealer knows or should reasonably know the vehicle is a rebuilt vehicle.
As added by P.L.2-1991, SEC.11.

IC 9-23-3-6.5

Document preparation fees

Sec. 6.5. It is an unfair practice for a dealer to require a purchaser of a motor vehicle as a condition of the sale and delivery of the motor vehicle to pay a document preparation fee, unless the fee:

- (1) reflects expenses actually incurred for the preparation of documents;
- (2) was affirmatively disclosed by the dealer;
- (3) was negotiated by the dealer and the purchaser;
- (4) is not for the preparation, handling, or service of documents

that are incidental to the extension of credit; and
(5) is set forth on a buyer's order or similar agreement by a means other than preprinting.
As added by P.L.102-1991, SEC.1.

IC 9-23-3-7

Violation of deceptive franchise practices provisions

Sec. 7. It is an unfair practice for a manufacturer or distributor to violate IC 23-2-2.7.
As added by P.L.2-1991, SEC.11.

IC 9-23-3-8

Manufacturer or distributor coercing dealer orders of parts, accessories, or equipment

Sec. 8. It is an unfair practice for a manufacturer or distributor to coerce a dealer to order from a person parts, accessories, equipment, machinery, tools, appliances, or any other commodity.
As added by P.L.2-1991, SEC.11.

IC 9-23-3-9

Manufacturer or distributor requiring changes in capital structure or business financing of dealer

Sec. 9. It is an unfair practice for a manufacturer or distributor to prevent or require or attempt to prevent or require by contract or otherwise, any change in the capital structure of a dealer or the means by or through which the dealer finances the dealer's operation, if the dealer at all times meets any reasonable capital standards agreed to by the dealer and the manufacturer or distributor. A change in capital structure does not cause a change in the principal management or have the effect of a sale of the franchise without the consent of the manufacturer or distributor.
As added by P.L.2-1991, SEC.11.

IC 9-23-3-10

Manufacturer or distributor requiring changes in dealer management

Sec. 10. It is an unfair practice for a manufacturer or distributor to prevent or require or attempt to prevent or require a dealer to change the dealer's executive management, other than the principal dealer operator or operators if the franchise was granted in reliance upon the personal qualifications of those persons.
As added by P.L.2-1991, SEC.11.

IC 9-23-3-11

Restraint by manufacturer or distributor on sale or transfer of interest by dealer or its officers, partners, or stockholders

Sec. 11. It is an unfair practice for a manufacturer or distributor to prevent or require or attempt to prevent or require by contract or otherwise, a dealer or an officer, a partner, or a stockholder of a dealer to sell or transfer a part of the interest of any of them to any

other person or persons. A dealer, an officer, a partner, or a stockholder may not sell, transfer, or assign the franchise or a right under the franchise without the consent of the manufacturer or distributor, which consent may not be unreasonably withheld.

As added by P.L.2-1991, SEC.11.

IC 9-23-3-12

Manufacturer or distributor preventing dealer from receiving fair compensation for franchised business

Sec. 12. It is an unfair practice for a manufacturer or distributor to prevent or attempt to prevent a dealer from receiving fair and reasonable compensation for the value of the franchised business as a going concern. The dealer may not transfer or assign the dealer's franchise without the consent of the manufacturer or distributor, and the manufacturer or distributor may not unreasonably withhold consent.

As added by P.L.2-1991, SEC.11.

IC 9-23-3-13

Employment of unlicensed representative for manufacturer or distributor

Sec. 13. It is an unfair practice for a manufacturer or distributor to employ a person as a representative who has not been licensed under this article.

As added by P.L.2-1991, SEC.11.

IC 9-23-3-14

Payment of dealer for labor costs; uniform warranty reimbursement policies

Sec. 14. (a) This section does not authorize a manufacturer or distributor and its franchisees in Indiana to establish a uniform hourly labor reimbursement rate effective for the entire state.

(b) It is an unfair practice for a manufacturer or distributor to fail to compensate to a dealer the posted hourly labor rate for the work and services the dealer is required to perform in connection with the dealer's delivery and preparation obligations under any franchise or fail to compensate to a dealer the posted hourly labor rate for labor and other expenses incurred by the dealer under the manufacturer's warranty agreements as long as the posted rate is reasonable. Judgment of the reasonableness includes consideration of charges for similar repairs by comparable repair facilities in the local area as well as mechanic's wages and fringe benefits.

(c) A manufacturer or distributor and at least thirty percent (30%) of its franchisees in Indiana of the same line make may agree in an express written contract citing this section to a uniform warranty reimbursement policy to be used by franchisees for the performance of warranty repairs. The contract must include the reimbursement for parts used in warranty repairs or the use of a uniform time standards manual, or both. The allowance for diagnosis within the uniform time standards manual must be reasonable and adequate for the work

and service to be performed. The manufacturer or distributor shall have:

- (1) only one (1) agreement with each line make; and
- (2) a reasonable and fair procedure for franchisees to request a modification or adjustment of a standard included in the uniform time standards manual.

(d) A contract described in subsection (c) must meet the following criteria:

- (1) Establish a uniform parts reimbursement rate that must be greater than the manufacturer's or distributor's nationally established parts reimbursement rate in effect at the time the contract becomes effective. A subsequent contract must include a uniform reimbursement rate that is equal to or greater than the rate in the immediately prior contract.
- (2) Apply to all warranty repair orders written while the agreement is in effect.
- (3) At any time during the period the contract is in effect:
 - (A) be available to any franchisee of the same line make as the franchisees who entered into the contract with the manufacturer or distributor; and
 - (B) be available to the franchisee of the same line make on the same terms as apply to the franchisees who entered into the contract with the manufacturer or distributor.
- (4) Be for a term not to exceed three (3) years.
- (5) Allow any party to the uniform warranty reimbursement policy to terminate the policy with thirty (30) days prior written notice to all parties upon the annual anniversary of the policy, if the policy is for at least one (1) year.
- (6) Remain in effect for the entire life of the original period if the manufacturer and at least one (1) franchisee remain parties to the policy.

(e) A manufacturer or distributor that enters into a contract with its franchisees under subsection (c) may only seek to recover its costs from a franchisee that receives a higher reimbursement rate, if authorized by law, subject to the following:

- (1) Costs may be recovered only by increasing invoice prices on new vehicles received by the franchisee.
- (2) A manufacturer or distributor may make an exception for vehicles that are titled in the name of a purchaser in another state. However, price increases imposed for the purpose of recovering costs imposed by this section may vary from time to time and from model to model and must apply uniformly to all franchisees of the same line make that have requested reimbursement for warranty repairs at a level higher than provided for in the agreement.

(f) A manufacturer or distributor that enters into a contract with its franchisees under subsection (c) shall do the following:

- (1) Certify to the bureau under oath, in a writing signed by a representative of the manufacturer or distributor, that at the time the contract was entered into at least thirty percent (30%) of the

franchisees of the line make were parties to the contract.

(2) File a copy of the contract with the bureau at the time of the certification.

(3) Maintain a file that contains the information upon which the certification required under subdivision (1) is based for three (3) years after the certification is made.

As added by P.L.2-1991, SEC.11. Amended by P.L.78-2002, SEC.6.

IC 9-23-3-15

Payment or disapproval of dealer claims for delivery and preparation work or for warranty work; notice of disapproval

Sec. 15. It is an unfair practice for a manufacturer or distributor to:

(1) fail to pay all claims made by dealers for compensation for delivery and preparation work and warranty work within thirty (30) days after approval;

(2) fail to approve or disapprove the claims within thirty (30) days after receipt; or

(3) disapprove a claim without notice to the dealer in writing of the grounds for disapproval.

As added by P.L.2-1991, SEC.11.

IC 9-23-3-16

Selling motor vehicle to unlicensed person for resale

Sec. 16. It is an unfair practice for a manufacturer or distributor to sell a motor vehicle for resale to a person not licensed under this article.

As added by P.L.2-1991, SEC.11.

IC 9-23-3-17

Failure to indemnify or hold harmless dealer for losses, costs, and expenses from suits for defects in vehicles or other goods or services

Sec. 17. It is an unfair practice for a manufacturer or distributor to refuse or fail to indemnify and hold harmless a dealer, upon written notification from the dealer, from all losses, costs, and expenses that result or arise from or are related to a complaint, claim, defense, or suit against the dealer that concerns defects in a motor vehicle or other goods or services that are the responsibility of the manufacturer.

As added by P.L.2-1991, SEC.11.

IC 9-23-3-18 Repealed

(Repealed by P.L.258-1999, SEC.3.)

IC 9-23-3-19

False, deceptive, or misleading advertising; other deceptive acts or practices

Sec. 19. It is an unfair practice for an automobile auctioneer, a wholesale dealer, or a transfer dealer, in connection with the

auctioneer's or dealer's business, to use false, deceptive, or misleading advertising or to engage in deceptive acts or practices.
As added by P.L.2-1991, SEC.11. Amended by P.L.268-2003, SEC.29.

IC 9-23-3-20

Employees, agents, officers, partners, or representatives of licensee

Sec. 20. It is an unfair practice for an employee, an agent, an officer, a partner, or a representative of a licensee to engage in a practice prohibited by this chapter.

As added by P.L.2-1991, SEC.11.

IC 9-23-3-21

Franchise termination

Sec. 21. It is an unfair practice for a manufacturer to terminate a franchise in violation of IC 23-2-2.7-3.

As added by P.L.2-1991, SEC.11.

IC 9-23-3-22

Transaction conditioned upon continuation of franchise

Sec. 22. (a) A dealer may not transfer, sell, or assign the business and assets of a dealership or an interest in the dealership to another person that contemplates or is conditioned upon a continuation of the franchise relationship with the manufacturer or distributor unless the dealer first:

- (1) notifies the manufacturer or distributor of the dealer's decision to make the transfer, assignment, or sale by written notice; and
- (2) obtains the approval of the manufacturer or distributor.

The dealer must provide the manufacturer or distributor with completed application forms and related information generally used by the manufacturer or distributor to conduct its review of such a proposal, and a copy of all agreements regarding the proposed transfer, assignment, or sale.

(b) The manufacturer or distributor shall send a letter by certified mail to the dealer within sixty (60) days of receipt of the information specified in subsection (a). The letter must indicate any disapproval of the transfer, assignment, or sale and must set forth the material reasons for the disapproval. If the manufacturer or distributor does not respond by letter within the sixty (60) day period, the manufacturer's or distributor's consent to the proposed transfer, assignment, or sale is considered to have been granted. A manufacturer or distributor may not unreasonably withhold approval of a transfer, assignment, or sale.

(c) A manufacturer or distributor has a right of first refusal as specified in the franchise agreement to acquire the new vehicle dealer's assets or ownership if there is a proposed change of more than fifty percent (50%) of the dealer's ownership or the transfer of more than fifty percent (50%) of the new vehicle dealer's assets if all of the following are met:

- (1) The manufacturer or distributor notifies the dealer in writing of its intent to exercise its right of first refusal within the sixty (60) day notice limit provided in subsection (b).
- (2) The exercise of the right of first refusal will result in the dealer and the dealer's owners receiving consideration, terms, and conditions that are either the same as or better than those they have contracted to receive under the proposed change of more than fifty percent (50%) of the dealer's ownership or the transfer of more than fifty percent (50%) of the new vehicle dealer's assets.
- (3) The proposed change of the dealership's ownership or the transfer of the new vehicle dealer's assets does not involve the transfer of assets or the transfer or issuance of stock by the dealer or one (1) or more of the dealer's owners to any of the following:
 - (A) A designated family member or members including any of the following members of one (1) or more dealer owners:
 - (i) The spouse.
 - (ii) A child.
 - (iii) A grandchild.
 - (iv) The spouse of a child or a grandchild.
 - (v) A sibling.
 - (vi) A parent.
 - (B) A manager:
 - (i) employed by the dealer in the dealership during the previous four (4) years; and
 - (ii) who is otherwise qualified as a dealer operator.
 - (C) A partnership or corporation controlled by any of the family members described in clause (A).
 - (D) A trust arrangement established or to be established:
 - (i) for the purpose of allowing the new vehicle dealer to continue to qualify as such under the manufacturer's or distributor's standards; or
 - (ii) to provide for the succession of the franchise agreement to designated family members or qualified management in the event of the death or incapacity of the dealer or its principal owner or owners.
- (4) Except as otherwise provided in this subsection, the manufacturer or distributor agrees to pay the reasonable expenses, including reasonable attorney's fees, that do not exceed the usual, customary, and reasonable fees charged for similar work done for other clients, and that are incurred by the proposed owner or transferee before the manufacturer's or distributor's exercise of its right of first refusal in negotiating and implementing the contract for the proposed change of the dealer ownership or the transfer of the new vehicle dealer's assets. Payment of expenses and attorney's fees is not required if the dealer has failed to submit an accounting of those expenses within twenty (20) days of the dealer's receipt of the manufacturer's or distributor's written request for such an

accounting. An expense accounting may be requested by a manufacturer or distributor before exercising its right of first refusal.

(d) Violation of this section by the manufacturer or distributor is an unfair practice by a manufacturer or distributor.

As added by P.L.152-1999, SEC.1.

IC 9-23-3-23

Manufacturer or distributor requiring changes in franchise or dealership

Sec. 23. It is an unfair practice for a manufacturer, distributor, officer, or agent to do any of the following:

(1) Require, coerce, or attempt to coerce any new motor vehicle dealer in Indiana to:

(A) change location of the dealership;

(B) make any substantial alterations to the use of franchises;
or

(C) make any substantial alterations to the dealership premises or facilities;

if to do so would be unreasonable or would not be justified by current economic conditions or reasonable business considerations. This subdivision does not prevent a manufacturer or distributor from establishing and enforcing reasonable facility requirements.

(2) Require, coerce, or attempt to coerce any new motor vehicle dealer in Indiana to divest its ownership of or management in another line or make of motor vehicles that the dealer has established in its dealership facilities with the prior written approval of the manufacturer or distributor.

(3) Establish or acquire wholly or partially a franchisor owned outlet engaged wholly or partially in a substantially identical business to that of the franchisee within the exclusive territory granted the franchisee by the franchise agreement or, if no exclusive territory is designated, competing unfairly with the franchisee within a reasonable market area. A franchisor is not considered to be competing unfairly if operating:

(A) a business either temporarily for a reasonable period of time;

(B) in a bona fide retail operation that is for sale to any qualified independent person at a fair and reasonable price;
or

(C) in a bona fide relationship in which an independent person or persons have made a significant investment subject to loss in the business operation and can reasonably expect to acquire majority ownership or managerial control of the business on reasonable terms and conditions.

This subsection shall not apply to recreational vehicle manufacturer franchisors.

As added by P.L.152-1999, SEC.2. Amended by P.L.118-2001, SEC.3.

IC 9-23-3-24

Relocation of new motor vehicle dealers

Sec. 24. (a) This section does not apply to the relocation of a new motor vehicle dealer to a location that is not more than two (2) miles from its established place of business.

(b) This section does not apply to the reopening or replacement in a relevant market area of a closed dealership that has been closed within the preceding year, if the established place of business of the reopened or replacement dealer is within two (2) miles of the established place of business of the closed dealership.

(c) Before a franchisor enters into a franchise establishing or relocating a new motor vehicle dealer within a relevant market area where the same line make is represented, the franchisor shall give written notice to each new motor vehicle dealer of the same line make in the relevant market area of the franchisor's intention to establish an additional dealer or to relocate an existing dealer within that relevant market area.

(d) Not later than thirty (30) days after:

(1) receiving the notice provided for in subsection (c); or

(2) the end of any appeal procedure provided by the franchisor; a new motor vehicle dealer may bring a declaratory judgment action in the circuit court for the county in which the new motor vehicle dealer is located to determine whether good cause exists for the establishing or relocating of a proposed new motor vehicle dealer. If an action is filed, the franchisor may not establish or relocate the proposed new motor vehicle dealer until the circuit court has rendered a decision on the matter. An action brought under this section shall be given precedence over all other civil matters on the court's docket.

(e) In determining whether good cause exists for establishing or relocating an additional new motor vehicle dealer for the same line make, the court shall take into consideration the existing circumstances, including the following:

(1) Permanency of the investment.

(2) Effect on the retail new motor vehicle business and the consuming public in the relevant market area.

(3) Whether it is injurious or beneficial to the public welfare.

(4) Whether the new motor vehicle dealers of the same line make in that relevant market area are providing adequate competition and convenient consumer care for the motor vehicles of that line make in the market area, including the adequacy of motor vehicle sales and qualified service personnel.

(5) Whether the establishment or relocation of the new motor vehicle dealer would promote competition.

(6) Growth or decline of the population and the number of new motor vehicle registrations in the relevant market area.

(7) The effect on the relocating dealer of a denial of its relocation into the relevant market area.

As added by P.L.118-2001, SEC.4.

IC 9-23-3-25

Acting, offering to act as, or professing to be a broker of vehicles

Sec. 25. It is an unfair practice for a person to:

- (1) act as;
- (2) offer to act as; or
- (3) profess to be;

a broker in the advertising, buying, or selling of at least twelve (12) new or used vehicles per year.

As added by P.L.268-2003, SEC.30.